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Nos. 15, 106, 84, 86

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In the Supreme Court of the United States

OCTOBER TERM, 1930

BURNS POE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF WASHINGTON

v.

H. G. SEABORN

FRED O. GOODELL, COLLECTOR OF INTERNAL REVENUE

v.

I. B. KOCH

ON CERTIFICATES FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

GEO. C. HOPKINS, COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

C. W. BACON

JACOB O. BENDER, COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

WILLIAM PFAFF

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM REGARDING THE LEGISLATIVE HISTORY OF SECTION 1212 OF THE REVENUE ACT OF 1926

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 15

BURNS POE, COLLECTOR OF INTERNAL REVENUE FOR the District of Washington

v.

H. G. SEABORN

No. 106

FRED O. GOODELL, COLLECTOR OF INTERNAL REVENUE

v.

I. B. KOCH

ON CERTIFICATES FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 84

GEO. C. HOPKINS, COLLECTOR OF INTERNAL REVENUE, petitioner

v.

C. W. BACON

No. 86

JACOB O. BENDER, COLLECTOR OF INTERNAL REVENUE, petitioner

v.

WILLIAM PFAFF

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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MEMORANDUM REGARDING THE LEGISLATIVE HISTORY OF SECTION 1212 OF THE REVENUE ACT OF 1926

The report of the Ways and Means Committee of the House accompanying the Revenue Bill of 1926 (House Report No. 1, 69th Congress, 1st Session) is dated December 7, 1925, and shows that no community property legislation was included in the Bill as reported to the House. The report of the Senate Committee on Finance (Senate Report No. 52, 69th Congress, 1st Session) is dated January 16, 1926, twelve days after this Court rendered its decision in *United States* v. *Robbins,* 269 U. S. 315. This report shows that no community property legislation was contained in the bill at that time.

The first provision in the Revenue Bill of 1926 having a direct bearing on the community property situation was embodied in an amendment to the Bill which was proposed by Senator Jones of Washington on the floor of the Senate on February 12, 1926. The Congressional Record for that date reports the following proceedings (67 Cong. Rec., Part 4, p. 3895):

> Mr. JONES of Washington. I offer an amendment, which I understand the Senator in charge of the bill is willing to send to conference for consideration by the conferees.
>
> Mr. SMOOT. With that statement, I have no objection to the insertion of the amendment in the bill.
>
> The VICE PRESIDENT. The clerk will state the amendment.

The CHIEF CLERK. On page 334, after line 10, after the amendments heretofore agreed to, insert:

RETROACTIVE REGULATIONS

SEC. 1213. The liability of any taxpayer under any internal revenue law shall be determined (unless such taxpayer otherwise consents or requests) in accordance with the Treasury decisions, opinions of the Attorney General, and regulations made by the commissioner or the Secretary, or by the commissioner with the approval of the Secretary, in force at the time his return was made, whether such return was made before or after the enactment of this act. As used in this subdivision the term "return" means, in the case of a return which has been amended, the return as finally amended.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

This amendment became Senate Amendment No. 204. The Bill, with the Senate amendments, was thereafter referred to the Committee of Conference. Senate Amendment 204 was objected to by the House conferees with the result that the more limited provisions which subsequently became Section 1212 of the Revenue Act of 1926 (see appendix, *infra*) were agreed to as a substitute for the Senate amendment. This action is shown by the following extracts from the Conference Report to

the House (House Report No. 356, 69th Congress, 1st Session, pp. 29, 59–60):

> Amendment numbered 204:
>
> That the House recede from its disagreement to the amendment of the Senate numbered 204, and agree to the same with an amendment as follows:
>
> In lieu of the matter proposed to be inserted by the Senate amendment insert the following:
>
> *Community property*
>
> *Sec. 1212. Income for any period before January 1, 1925, of a marital community in the income of which the wife has a vested interest as distinguished from an expectancy, shall be held to be correctly returned if returned by the spouse to whom the income belonged under the State law applicable to such marital community for such period. Any spouse who elected so to return such income shall not be entitled to any credit or refund on the ground that such income should have been returned by the other spouse* and a period.
>
> And the Senate agree to the same.
>
> * * * * *
>
> Amendment No. 204: This amendment was intended to provide for retroactive validation of all Treasury decisions, opinions of the Attorney General, and regulations of the Treasury Department made under prior revenue acts; it provided that the liability of any taxpayer under any internal revenue law

> should be determined in accordance with the Treasury decision, opinion of the Attorney General, and Treasury regulations in force at the time the taxpayer's return was made. The House recedes with an amendment striking out the Senate provision and inserting a section providing that income for any period before January 1, 1925, of a marital community in the income of which the wife has a vested interest as distinguished from an expectancy, shall be held to be correctly returned if returned by the spouse to whom the income belonged under the State law applicable to such marital community for such period. The section as agreed to also provides that any spouse who elects so to return such income shall not be entitled to refund on the ground that such income should have been returned by the other spouse.

In reporting the Conference Bill to the House, Representative Green, of Iowa (one of the Conference Managers), made the following statement in connection with various retroactive provisions in the Revenue Act of 1926, including Section 1212 of that Act (67 Cong. Rec., Part 4, p. 4421):

> The number of these amendments was caused by circumstances which arose after the House passed the bill. There were four decisions of various courts—the Supreme Court, the Court of Claims, the Board of Tax Appeals—which would have necessitated a complete change of the regulations of the Treasury Department and going back for

> five or six years on some of the most complicated matters ever submitted unless we put in this bill a retroactive provision closing up those cases on the basis of the settlement by the taxpayer and in accordance with the rules under which the Treasury Department had been acting—rules and regulations which the House itself had practically sanctioned, because it attempted to make no change in them, believed them to be valid, to be enforcible, and on the whole believed them to be the best ones that could be enacted. I refer now to the community-property decision of the Supreme Court [the *Robbins case*], the installment-sales decision on the part of the Board of Tax Appeals, the decision of the Supreme Court with reference to the year when taxes should be credited in determining invested capital, and the decision of the Court of Claims with reference to the force and effect of the statute of limitations

This presentation of the legislative history of Section 1212 of the Revenue Act of 1926 makes it clear that that Section had its inception after the decision of this Court in *United States* v. *Robbins, supra,* and as a result of that decision.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

OCTOBER, 1930.

APPENDIX

Section 1212 of the Revenue Act of 1926, c. 27, 44 Stat. 9, 130 (U. S. C. App., Title 26, Sec. 964a) provides:

> SEC. 1212. Income for any period before January 1, 1925, of a marital community in the income of which the wife has a vested interest as distinguished from an expectancy, shall be held to be correctly returned if returned by the spouse to whom the income belonged under the State law applicable to such marital community for such period. Any spouse who elected so to return such income shall not be entitled to any credit or refund on the ground that such income should have been returned by the other spouse.

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